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500.30802CC4/B8136-06EX

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Atsushi TAKAI *et al.*
Serial No. : 10/623,160
Filed : 21 July 2003
For : OPTICAL FREQUENCY DIVISION MULTIPLEXING NETWORK
Art Unit : 2633
Examiner : D.E. Singh
Conf. No. : 2704

**STATUTORY DISCLAIMER TO OBVIATE
A DOUBLE-PATENTING REJECTION (37 C.F.R. Section 1.321(c))**

Commissioner for Patents
POB 1450
Alexandria, Virginia 22313-1450

4 February 2005

Sir:

IDENTIFICATION OF PERSON MAKING THIS DISCLAIMER

I, Alan E. SCHIAVELLI, represent that I am an attorney of record.

EXTENT OF DISCLAIMANT'S INTEREST

The extent of the interest in this invention that the Disclaimant owns is in the whole of this invention, by virtue of the Assignment recorded 29 November 1991 at Reel 5975, Frames 512 *et seq.* in Serial No. 07/800,255 (now US 5,312,540 A), upon which benefit is claimed in the present case under 35 USC §120.

DISCLAIMER**(Obviousness-Type Double Patenting Rejection Over A Prior Patent)**

HITACHI, LTD. ("Disclaimant") hereby disclaims except as provided below, the terminal part of any patent granted on the instant application which would extend beyond the expiration date of: US 6,619,865 B1; US 5,510,921 A; US 5,801,864 A; and US 5,321,540 A, as presently shortened by any Statutory Disclaimer.

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Disclaimant hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the above-listed patents are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors, or assigns.

In making the above disclaimer, Disclaimant does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 USC Sections 154 to 156 and 173 of any of the patents forming the basis of the double patenting rejections, namely: US 6,619,865 B1; US 5,510,921 A; US 5,801,864 A; and US 5,321,540 A, as presently shortened by any Statutory Disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR §1.321, has all claims cancelled by a Re-Examination Certificate, is reissued, or is in any manner terminated prior to expiration of its full statutory term as presently shortened by any Statutory Disclaimer, except for the separation of legal title stated above.

DISCLAIMER FEE (37 C.F.R. Section 1.20(d))


Other than a small entity—fee \$130.00 (Fee Code 1814).

FEE PAYMENT

Filed concurrently herewith is a Form PTO-2038 (Credit Card Payment) authorizing payment of the sum of \$130.00.

Charge ATSK Deposit Account No. 01-2135 for any actual fee deficiency.

Date: 4 February 2005



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